



EX PARTE OR LATE FILED

James K. Smith
Director
Federal Relations

December 22, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Statement
CC Docket 98-147

Dear Ms. Salas:

The attached material was provided to staff. Please include the material in the record of this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "James K. Smith", written in a cursive style.

Attachment

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NATIONWIDE PACKET-SWITCHED LATAS

This elaborates on Ameritech's position regarding the Commission's authority under section 3(25)(B) of the Communications Act (47 U.S.C. § 153(25)(B)) to revise LATA boundaries on a nationwide basis for specific services. In particular, this paper describes the Commission's authority under section 3(25)(B) to approve a nationwide LATA for the provision of advanced packet-switched data services, in light of section 10(d) (47 U.S.C. § 160(d)), which limits Commission forbearance with respect to the requirements of section 271.

As discussed below, the Commission has authority to approve a nationwide LATA established for the provision of advanced packet-switched data services without running afoul of the prohibition in section 10(d). In the first place, section 3(25)(B) contains no express limitation on the Commission's authority to approve new or modified LATA boundaries established by a BOC for specific services. The Commission concluded in its initial Memorandum Opinion and Order in this docket, that section 10(d) precludes the Commission from approving changes in LATA boundaries that would "eliminate" or "eviscerate" such boundaries altogether.¹ However, a nationwide data LATA for specific services, with an additional limitation of separate affiliate requirements, would not completely eliminate LATA boundaries for *all* services, nor would it undermine the objectives or effectiveness of section 271 and 10(d). Consequently, the Commission could approve a change in LATA boundaries that would permit a BOC's separate affiliate to provide specific advanced packet-switched data services on a nationwide basis.

Statutory Authority.

Section 3(25)(B) expressly authorizes the Commission to approve LATA boundaries that a BOC has "modified" or "established." The express language of that provision places no limit on the Commission's authority to approve any alteration in LATA boundaries that the Commission determines is in the public interest and consistent with the goals of the Communications Act. Consequently, nothing in the language of section 3(25)(B) prohibits the Commission from approving a nationwide LATA for packet-switched services.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188 at 81-82 (rel. Aug. 7, 1998) ("MO&O"). In the MO&O, the Commission found that Ameritech's request "as proposed" to establish a global LATA for all advanced data services would "effectively eliminate" LATA boundaries for such services, and "eviscerate" the market opening incentives in section 271. *Id.* Based on these findings, the Commission treated the request as one for "forbearance," *i.e.* elimination, not modification, and, therefore, precluded by section 10(d). *Id.*

In addition, a national LATA limited to specific services provided under restrictive conditions would be fully consistent with the Supreme Court's determination that the Commission's authority to "modify" tariff filing requirements empowered the Commission to adopt only limited changes in such requirements. *See MCI Telecommunications Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994). In any event, section 3(25)(B) also authorizes the Commission to approve wholly new LATA boundaries that a BOC has "established" after the date of enactment. In this respect, section 3(25)(B) clearly authorizes the Commission to approve more than a mere juggling of preexisting LATA boundaries. Obviously Congress did not contemplate that a BOC would establish new LATAs within the existing LATAs. To the contrary, Congress had to be contemplating the establishment of new LATA(s) that were broader in scope. Consequently, even if the Commission wrongly concludes that a national data LATA exceeds the Commission's authority to "modify" existing LATAs, it clearly falls within the Commission's power to "establish" new LATA(s).

Section 10(d), therefore, should only be read to prohibit the Commission from approving changes in LATA boundaries that would effectively eliminate such boundaries, or undermine the objectives of section 271. The establishment of a nationwide LATA for specific services, provided by a separate affiliate, would not, however, violate such a prohibition. So long as a nationwide LATA was limited in scope and narrowly targeted, such relief would neither "eliminate" LATAs, nor materially affect a BOC's incentives to pursue section 271 relief.

Section 271 Incentives.

Nor would the establishment of a nationwide data LATA undermine the market-opening objectives of section 271. First, section 251 is not permissive; the BOCs must comply with its requirements irrespective of section 271. More importantly, Ameritech has proposed that the Commission restrict the scope of any LATA change for advanced data services based on a variety of conditions, including a showing that the BOC has complied with: (1) the separate subsidiary framework established by the Commission, and (2) conditions to ensure that all the prerequisites to vibrant competition in advanced data services are available, including all relevant collocation and unbundling requirements. Thus, in order to compete effectively against integrated providers of data and voice services (like AT&T) in the new global telecommunications marketplace, a BOC would still have a strong incentive to fulfill the requirements of section 271 as soon as possible.

MFJ Precedent.

In addition, as Ameritech discussed in its December 16 *Ex Parte*, and the Commission found in the *US West LATA Boundary Waiver Order*,² the Commission's

² *US West LATA Boundary Waiver Order*, DA 97-767 para. 16 (rel. Apr. 21, 1998) (concluding that section 3(25)(B) transferred the MFJ Court's authority to administer LATA boundary modifications to the Commission).

authority to modify or establish new LATA boundaries is at least as broad as that of the MFJ Court. And that court on several occasions authorized changes in LATA boundaries, including on a nationwide or multistate basis, to permit the efficient provision of new services when such modifications did not pose a significant threat to competition.

In 1995, for example, Judge Greene authorized all of the Bell operating companies ("BOCs") to provide interLATA cellular and other wireless services throughout the United States, provided certain procompetitive conditions were satisfied. (*United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Apr. 28, 1995).) Similarly, the court authorized US West to provide transmission and other services associated with its provision of cable television services anywhere in the United States outside its region, provided it complied with various competitive safeguards, including the requirement that it provide such services only through Time Warner Entertainment Company, L.P. (*United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Oct. 24, 1994).) The court also authorized Pacific Telesis ("PacTel") to provide certain wireless services anywhere in the United States outside PacTel's California-Nevada region if certain conditions were met. (*United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Feb. 20, 1985).)

While Ameritech does not believe that the Commission's authority to approve new or modified LATA boundaries under section 3(25)(B) is limited to the changes authorized by Judge Greene, its authority is at least as broad as that of the court under the MFJ. Consequently, under MFJ precedent, the Commission has authority to approve the establishment of new or modified LATA boundaries that would permit a BOC to provide a new service (such as advanced packet-switched data services provided through a separate affiliate) on a nationwide basis if (as here) such a change in LATA boundaries does not pose a significant risk of competitive harm.

Conclusion.

A nationwide LATA for specific services, i.e., packet-switched data, provided through a separate affiliate, is neither far-reaching nor unprecedented. Nor is it a request for "forbearance." Rather, it is a reasonable modification, not an elimination, of existing (but ill-suited) LATA boundaries necessary to permit the deployment of new advanced services on an efficient, competitive basis. Accordingly, the Commission should approve these requests.